



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
<b>NET FISCAL IMPACT</b>	<b>\$ -0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
# ADDITIONAL FTE POSITIONS (Cumulative)					

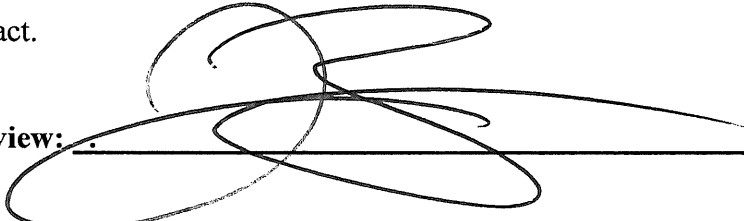
Is Item Included in Current Budget?                      Yes    No  
 Does this item include the use of federal funds?    Yes    No **X**

Budget Acct No.: Fund\_\_ Dept.\_\_ Unit\_\_ Object  
 Program

**Recommended Sources of Funds/Summary of Fiscal Impact:**

\*\*This item has no fiscal impact.

**C. Departmental Fiscal Review:**



**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

*Lisa Mente* 9/2/21                      *Aracelis Jacobson* 9/1/21  
 OFMB 9A 9-2-21 8/9/21                      Contract Dev. and Control

**B. Approved as to Form  
 and Legal Sufficiency:**

*AP Herman* 9/14/21  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

I-95 & CENTRAL BLVD



LOCATION MAP

**RESOLUTION NO. R-2021-**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, APPROVING THE RIGHT OF WAY ACQUISITION MEMORANDUM OF AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION CONCERNING THE I-95 AND CENTRAL BOULEVARD INTERCHANGE PROJECT.**

**WHEREAS**, the Florida Department of Transportation (FDOT) intends to construct a transportation project for the improvement of the interchange at State Road 9/I-95 at Central Boulevard (“Project”); and

**WHEREAS**, the FDOT is the owner of I-95 and the Central Boulevard bridge spanning I-95, and Palm Beach County (County) is the owner of the roadway portions of Central Boulevard east and west of the bridge; and

**WHEREAS**, the Project will involve the acquisition of various property interests along the Project’s corridor, including along Central Boulevard; and

**WHEREAS**, upon completion of the Project, FDOT intends to transfer property interests acquired along Central Boulevard to the County; and

**WHEREAS**, the right of way acquisition Memorandum of Agreement (Agreement) establishes the terms under which the FDOT will acquire and transfer to the County the property interests along Central Boulevard; and

**WHEREAS**, the Board of County Commissioners of Palm Beach County (BCC) has determined execution of the Agreement to be in the best interest of the citizens and residents of the County.

(Intentionally Left Blank)

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

1. The recitations set forth herein above are true, accurate and correct and are incorporated herein.
2. The BCC hereby approves the Agreement with the FDOT.
3. This Resolution will take effect upon its adoption.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

Commissioner Dave Kerner, Mayor	-
Commissioner, Robert S. Weinroth, Vice Mayor	-
Commissioner Maria G. Marino	-
Commissioner Gregg K. Weiss	-
Commissioner Maria Sachs	-
Commissioner Melissa McKinlay	-
Commissioner Mack Bernard	-

The Mayor thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

PALM BEACH COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
FLORIDA, BY AND THROUGH ITS  
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

JOSEPH ABRUZZO,  
CLERK OF THE CIRCUIT COURT  
& COMPTROLLER

By: \_\_\_\_\_  
Assistant County Attorney  
Yelizaveta B. Herman

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO TERMS  
AND CONDITIONS

BY:   
Division Director

**RIGHT OF WAY ACQUISITION  
MEMORANDUM OF AGREEMENT**

This is a Memorandum of Agreement ("AGREEMENT") made and entered into this \_\_\_ day of \_\_\_\_\_, 2021, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida ("DEPARTMENT") and PALM BEACH COUNTY ("AGENCY"), a political subdivision of the state of Florida.

*WITNESSETH:*

WHEREAS, the DEPARTMENT is constructing a transportation project for the improvement of the interchange at State Road 9/I-95 at Central Boulevard ("Project"), as depicted in the attached Exhibit "A" and associated with Item/Segment Number 4132651; and

WHEREAS, the DEPARTMENT is the owner of I-95 and the Central Boulevard bridge (Bridge No. 930379) spanning I-95 and the AGENCY is the owner of roadway portions of Central Boulevard east and west of the bridge. The roadway portion along Central Boulevard: west of I-95 – extends from Sta. 74+39.74 to Sta. 86+28.03; east of I-95 – extends from Sta. 89+24.14 to Sta. 101+50.79; and

WHEREAS, pursuant to Sections 339.07, 339.08 and 339.12, Florida Statutes, and Federal funding provisions, the DEPARTMENT is authorized to undertake projects within the AGENCY's geographical limits; and

WHEREAS, the Project will involve the acquisition of various property interests along the Project corridor, including along Central Boulevard; and

WHEREAS, the DEPARTMENT plans to construct the part of Central Boulevard on the east side of I-95 limited access right-of-way and conduct right of way acquisition and related activities, including eminent domain proceedings for the Project; and

WHEREAS, the DEPARTMENT will conduct its right of way acquisition activities in accordance with its right of way procedures and applicable Federal acquisition requirements; and

WHEREAS, the parties agree that it is in the best interest of the public to promote a cooperative effort between the DEPARTMENT and the AGENCY for the successful completion of the Project.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, this AGREEMENT sets forth and outlines the following agreements between the DEPARTMENT and the AGENCY concerning the performance of acquisition and maintenance activities by the AGENCY and the DEPARTMENT for the DEPARTMENT's Project:

1. The above recitals are true and correct and are incorporated herein by reference.
2. Upon completion of its acquisition and construction activities for the Project, the DEPARTMENT will transfer, and the AGENCY will accept, the acquired property rights along the AGENCY's facilities, as depicted in Exhibit A.

3. No driveway shall be permitted within 654 feet east of limited access right-of-way line.
4. Said conveyance shall include, and the AGENCY fully accepts, a transfer and assignment of all rights and obligations pursuant to any utility subordination, and/or other agreements after being reviewed by the AGENCY or matters of record relating to the property to be conveyed and the AGENCY shall assume all responsibilities and liabilities arising from any obligations thereunder which responsibilities, liabilities and obligations as set forth in the conveyance documents shall run with the land. This provision shall survive the termination of this AGREEMENT.
5. The AGENCY shall allow the DEPARTMENT and its contractors to enter onto the existing AGENCY property. No further permit or agreement from the Agency shall be required to construct this Project.
6. The AGENCY shall continue to maintain the existing roadway and any property owned by the AGENCY until the DEPARTMENT begins construction of the Project.
7. Utilities. The AGENCY agrees and affirms that the DEPARTMENT may pursue any available legal remedies, including those in Sections 337.403-404, Florida Statutes, against any utility that the DEPARTMENT finds to be unreasonably interfering with the Project. The DEPARTMENT shall prepare, in consultation with the AGENCY, any notice pursuant to Section 337.403 (Notice) and the AGENCY will assist, if necessary, in giving the Notice to the interfering utility or its agent. The AGENCY shall not be responsible for any costs related to any utility relocation required or as a result of the Project. The Agency agrees to enter into utility subordination agreements or accept assignment thereof, with the affected utility owners having facilities within existing utility easements, thereby assuming liability for future utility relocations within the AGENCY right of way and proposed right of way.
8. The AGENCY shall cooperate with the DEPARTMENT to the extent necessary to construct the Project. This shall include but not be limited to the execution of documents; allowing the Department and/or their contractors/consultants to enter upon the real property owned, leased, possessed and/or controlled by the Agency which is needed for the Project to be constructed.
9. Notwithstanding any other provision herein to the contrary, the DEPARTMENT shall not be responsible for any costs or attorney fees arising out of any liabilities or obligations incurred regarding the right of way after the transfer of property.
10. Filing. A copy of this AGREEMENT shall be filed by AGENCY with the Clerk of the Circuit Court in and for Palm Beach County, Florida.
11. Legal Fees. Each Party shall bear its own costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this AGREEMENT.
12. Amendments. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to by the Parties in writing and executed in the same manner, as was this AGREEMENT.
13. Venue. This AGREEMENT shall be construed and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this AGREEMENT shall be held in Broward County. No remedy herein conferred upon either Party is intended to be exclusive of any other remedy, and each and every other remedy shall be cumulative and shall be in addition to every other remedy

given hereunder or now hereafter existing at law existing at law or in equity or by statute or otherwise. No single or partial exercise by either Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

14. Preparation. Preparation of this AGREEMENT was a joint effort of the Parties and should not be construed more severely against one Party than the other.
15. Non-Discrimination. The Parties agree to comply with the Federal and State laws. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
16. Severability. In the event any provision hereof is held invalid by a court of competent jurisdiction, the remaining portions of the AGREEMENT shall remain in full force and effect.
17. Entire Understanding. This AGREEMENT represents the entire understanding of the Parties and supersedes all other negotiations, representations or agreements, written or oral, relating to this AGREEMENT.
18. Contractual Relationship. AGENCY and DEPARTMENT are and shall be, in the performance of all work, services and activities under this AGREEMENT independent contractors and not employees, agents or servants of the other Party. All AGENCY employees engaged in the work or services performed pursuant to this AGREEMENT shall at all times, and in all places, be subject to AGENCY's sole direction, supervision, and control. All DEPARTMENT employees engaged in the work or services performed pursuant to this AGREEMENT shall at all times, and in all places, be subject to DEPARTMENT's sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Parties' relationship and the relationship of its employees to the other Party shall be that of an independent contractor and not as employees or agents of the other. The AGENCY and DEPARTMENT do not have the power or authority to bind each other in any promise, agreement or representation without the prior written consent of the other Party.
19. Waiver. Waiver may only be effectuated through written notice and shall not be deemed a continuing waiver unless specifically so stated. Any waiver by either Party of its rights with respect to a default under this AGREEMENT, or with respect to any other matters arising in connection with this AGREEMENT, shall not be deemed a waiver with respect to any other default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this AGREEMENT or to exercise any rights under this AGREEMENT shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
20. Legal Compliance. AGENCY and DEPARTMENT shall abide by all applicable Federal, and State laws, orders, rules, and regulations when performing under this AGREEMENT.
21. Convicted Vendor List. As provided in Sections 287.132-133, Florida Statutes, as may be amended from time to time, by entering into this AGREEMENT or performing any work in furtherance hereof, DEPARTMENT shall have its contractor certify that their affiliates, suppliers and sub-consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof in accordance with the following (which is contained in the DEPARTMENT's Standard Specifications For Road and Bridge Construction):



A company and its employees, a person or an affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit the following: 1. A bid on a Contract to provide any goods or services to a public entity. 2. A bid on a Contract with a public entity for the construction or repair of a public building or public work. 3. Bids on leases of real property to a public entity. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 F.S., for Category Two. All restrictions apply for a period of 36 months from the date of placement on the convicted vendor list.

The Department shall have the right to declare the Contractor (or its "affiliate") in default and immediately terminate this Contract, without any prior notice to the Contractor, in the event the Contractor (or its "affiliate") is at any time "convicted" of a "contract crime," as these terms are defined in Section 337.165(1), Florida Statutes. The DEPARTMENT's right to default the Contractor (or its "affiliate") for "conviction" of a "contract crime" shall extend to and is expressly applicable to any and all Department Contracts that were either advertised for bid; for which requests for proposals or letters of interest were requested; for which an intent to award was posted or otherwise issued; or for which a

22. Contract was entered into, after the date that the underlying or related criminal indictment, criminal information or other criminal charge was filed against the Contractor (or its "affiliate") that resulted in the "conviction." In the event the Department terminates this Contract for this reason, the Contractor shall hereby forfeit any claims for additional compensation, extra time, or anticipated profits. The Contractor shall only be paid for any completed work up to the date of termination. Further, the Contractor shall be liable for any and all additional costs and expenses the Department incurs in completing the Contract work after such termination.

23. Scrutinized Companies.

- A. As provided in F.S. 287.135, by entering into this AGREEMENT or performing any work in furtherance hereof, DEPARTMENT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.
- B. When contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this AGREEMENT or performing any work in furtherance hereof, the DEPARTMENT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.
- C. If the AGENCY determines, using credible information available to the public, that a false certification has been submitted by DEPARTMENT, this AGREEMENT may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this AGREEMENT shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of AGREEMENT renewal, if applicable.

24. Survivability. The obligations, rights, and remedies of the Parties hereunder, which by their nature are intended to survive the termination of this AGREEMENT or the completion of the work related to this AGREEMENT, shall survive such termination or work completion and inure to the benefit of the Parties.

25. Third Party Beneficiaries. No provision of this AGREEMENT is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this AGREEMENT, including but not limited to any citizen or employees of the AGENCY and/or DEPARTMENT.
26. Effective Date. This AGREEMENT shall be effective and binding upon the Parties hereto, once the AGREEMENT has been signed by both Parties and filed with the Clerk of the Court in and for Palm Beach County, Florida.
27. Counterparts and Transmission. To facilitate execution, this AGREEMENT may be executed in as many counterparts as may be convenient or required, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The executed signature page(s) from each original may be joined together and attached to one such original and it shall constitute one and the same instrument. In addition, said counterparts may be transmitted electronically (i.e., via facsimile or .pdf format document sent via electronic mail), which transmitted document shall be deemed an original document for all purposes hereunder.
28. To the extent provided by law, the AGENCY shall indemnify, defend and hold harmless the DEPARTMENT and all of its officers, agents and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the AGENCY, its agents or employees during acquisition and other related activities on the Project except that neither the AGENCY, its officers, agents or employees will be liable for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the DEPARTMENT or any of its officers, agents or employees during the performance of acquisition and other related activities on the Project.
29. Liability. Neither Party shall be deemed to assume any liability for the negligent or wrongful acts or omissions of the other Party. Nothing contained herein shall be construed as a waiver or expansion by the DEPARTMENT of the liability limits established in Section 768.28 of the Florida Statutes. AGENCY shall protect, defend, reimburse, indemnify and hold DEPARTMENT, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of DEPARTMENT's performance of the terms of this AGREEMENT or due to the acts or omissions of the AGENCY.
30. Notice. Any and all notices given or required under this AGREEMENT shall be in writing and either hand- delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be directed as follows:

**As to the DEPARTMENT:**

Bing Wang, Project Manager  
Florida Department of Transportation  
3400 West Commercial Boulevard  
Fort Lauderdale, Florida 33309-3421  
Phone: (954) 777-4406

With copy to:

Dan Marwood, Deputy Right of Way Manager - Production  
Florida Department of Transportation  
3400 West Commercial Boulevard  
Fort Lauderdale, Florida 33309-3421  
Phone: (954) 777-4236

**As to the AGENCY:**

Morton Rose, P.E., Director  
Roadway Production Division  
Palm Beach County Engineering & Public Works  
2300 N Jog Road  
West Palm Beach, FL 33411-2745

**With copy to:**

Yelizaveta Herman, Esquire  
Palm Beach County Attorney's Office  
301 N Olive Avenue, Suite 601  
West Palm Beach, FL 33401

31. Multiple copies of this AGREEMENT may be fully executed by all parties, each of which shall be deemed to be an original. The date entered above where indicated shall be the date the last party signed this AGREEMENT.

Either Party may update names or addresses above at any time by providing written notice to the other Party.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have made and caused this AGREEMENT to be authorized and duly executed on behalf of their respective entities.

**FOR DEPARTMENT:**

FLORIDA DEPARTMENT OF TRANSPORTATION, DISTRICT FOUR

By: \_\_\_\_\_

Administrative Assistant:

Print Name: Steven C. Braun, P.E.

Print Title: Director of Transportation Development

Print Name: \_\_\_\_\_

Legal Approval:

\_\_\_\_\_  
District Four Attorney

**FOR AGENCY:**

ATTEST:

PALM BEACH COUNTY, through its Board of County Commissioners

Joseph Abruzzo, Clerk of the Circuit Court & Comptroller

By: \_\_\_\_\_

Dave Kerner, Mayor

By: \_\_\_\_\_

(Deputy Clerk)

\_\_\_\_ Day of \_\_\_\_\_, 2021

Approved as to terms and conditions:

By: 

Approved as to Form & Legal Sufficiency:

By: \_\_\_\_\_

County Attorney

This Memorandum of Agreement has been duly authorized and approved on \_\_\_\_\_ by Palm Beach County Resolution No. \_\_\_\_\_.

